

CONCISE EXPLANATORY STATEMENT

WAC 180-19-010 – 180-19-050

This document has been prepared in compliance with RCW 34.05.325 (Public participation – Concise explanatory statement). Included are: (1) The reasons for adopting the rules; (2) a description of differences between the text of the proposed rules as published in the Washington State Register and the text of the final rules, and (3) a summary of all comments received, and responses to the comments by subject matter.

1. Reasons for Adopting the Rules

RCW 28A.710.090 requires the State Board of Education to establish an annual application and approval process and timelines for school district boards of directors seeking to be authorizers of charter schools. This section of law is the codification of Section 209 of Initiative Measure No. 1240, approved by the voters in the 2012 General Election. Subsection (1) provides that the initial process and timelines must be established no later than 90 days after December 6, 2012. This requires that the SBE adopt rules to this section no later than March 6, 2013.

2. Differences between Proposed and Final Rules

Differences between the proposed rules as published and the final rules are as follows.

Section	Change
180-19-020	<p>Establishes an ongoing date of October 1 for a school district to submit a notice of intent to file an authorizer application, except that a district seeking approval as an authorizer in 2013 must submit a notice of intent by April 1, 2013.</p> <p>Provides that the SBE shall post on its web site all notices of intent upon receipt.</p> <p>Clarifies that a notice of intent by a school district shall not be construed as an obligation to submit an authorizer application.</p>
180-19-030	<p>Establishes an ongoing date of October 1 for the SBE to post an authorizer application on its web site, except that the authorizer application for districts seeking approval in 2013 must be posted by April 1, 2013.</p> <p>Provides that a district seeking approval to be a charter school authorizer must submit the application to the SBE by December 31 of the year in which it seeks approval, except that a district seeking approval in 2013 must submit the application by July 1, 2013 (rather than June 15, 2013).</p> <p>Requires SBE to post authorizer applications on its web site.</p> <p>Changes requirement that a district explain how the charter schools it wishes to authorize "would differ" in specific features from schools it currently operates to how they "might differ," and reduces specificity.</p>

180-19-030, cont.	<p>Changes the requirement for “job descriptions and professional qualifications of authorizing personnel” to “job descriptions and qualifications of district personnel with anticipated authorizing responsibilities.”</p> <p>Strikes “specific” in reference to the description of each indicator, measure and metric to be used in the district’s performance framework.</p> <p>Specifies that the performance data to be used for proposed renewal, revocation and nonrenewal processes are academic, financial and operational.</p> <p>Clarifies that the statement of assurance that the charter schools the district will authorize appropriately serve children with disabilities and other special populations refers specifically to the contract to be executed between the district and the governing board of the charter school.</p>
180-19-040	<p>Establishes an ongoing date of April 1 for the SBE to issue a decision on an authorizer application, except that for applications submitted for approval in 2013, the SBE shall issue a decision by September 12, 2013 (rather than August 15, 2013).</p> <p>Provides that the SBE may require personal interviews for review of authorizer applications.</p>
Various	Makes technical corrections.
All sections	Replaces references to Initiative Measure No. 1240 with references to codified law.

3. Summary of All Comments and Responses

Comment	Response
There has not been sufficient time for public review and comment. The rules should not be heard and adopted at the same SBE meeting.	RCW 28A.710.090(1) requires that the initial process and timelines for approval of school districts to be authorizers be established by the SBE no later than March 6, 2013. The schedule for rule-making was informed by that statutory deadline. The Board has met all the requirements for rule-making in RCW 34.05 (Administrative Procedures Act), including the filing of a Preproposal Statement of Inquiry (CR 101) in November, and the filing of a notice of Proposed Rule Making (CR 102), with scheduled public hearing, in January. The Board posted draft rules on its public web site in December, and sent a message to a list of interested parties soliciting comment on the rules in January. There has been ample opportunity for the public to submit comments. Comments received were of high value to the Board in considering final rules for adoption.
Charter schools should remain as free as possible from existing constraints so that this first group of schools can develop to their potential. Their approach is different so they should not be bound to a set of rules that don’t fit this type of school.	RCW 28A.710.090(1) requires the SBE to establish an annual application and approval process and timelines for school districts seeking to be authorizers. This must be done through adoption of rules. The statutory requirements that must be met by charter schools are set forth in RCW 28A.710.040 (Charter schools – Requirements). The rules proposed as WAC 180-19.010 through 180-19-050 relate strictly to RCW 28A.710.090, concerning the process for approval of authorizers by the SBE.

In proposed WAC 180-19-020, the proposed rules should require that SBE post notices of intent to submit an application.	The proposed rules are amended to make this change.
In proposed WAC 180-19-030 (3)(e)(iii), concerning the district's proposed renewal, revocation and nonrenewal processes, "performance data" should be modified by "academic, financial and operational."	The proposed rules are amended to make this change.
In proposed WAC 180-19-030 (4), concerning the authorizing contract between the school district board of directors and the State Board of Education, "approved board" should read, for clarity, "approved district".	The proposed rules are amended to make this change.
If the application process is too difficult for new schools to apply for charters for the upcoming school year, it should be made available for existing schools to apply, as they would already have a lot of requirements for school operations in place.	This comment relates to possible rules to RCW 28A.710.130 (Charter school applications – Requests for proposals, content – Charter school application – Content) and RCW 28A.710.140 (Charter applications – Submissions – Approval or Denial), rather than to the rules proposed to RCW 28A.710.090. It should also be noted that under RCW 28A.710.010(1), schools cannot apply for charters. Eligible applicants are nonprofit corporations as defined in this section.
The State Board of Education's regulations concerning charter schools should include a provision that will prevent the de facto re-segregation of public schools. A student population of charter schools should fully reflect the student population of the host district.	<p>This suggested change is outside the scope of rule-making to RCW 28A.710.090.</p> <p>RCW 28A.710.050 (Admission and Enrollment of Students) provides in (1) that "A charter school may not limit admission on any basis other than age group of, grade level, or capacity and must enroll all students who apply within these bases. A charter school is open to any student regardless of his or her residence." It further provides in (3) that "If capacity is insufficient to enroll all students who apply to a charter school, the charter school must select students through a lottery to ensure fairness."</p> <p>It is beyond the rule-making authority of the SBE to prescribe in rule the demographic characteristics of students who may be enrolled in a charter school.</p>
How will the rules address issues of risk management and legal liability if a charter school operates outside a school district's control or outside of the district completely?	<p>This question is outside the scope of SBE rule-making to RCW 28A.710.090. It appears also to be outside the scope of SBE rule-making to other provisions of the law.</p> <p>The concern may be addressed through RCW 28A.710.020 (5), which provides that a charter school functions as a local education agency under applicable federal laws and regulations and is responsible for meeting the requirements of local education agencies and public schools under those federal laws and regulations; RCW 28A.710.100((5), which provides that neither an authorizer, individuals who comprise the membership of an authorizer in their official capacity,</p>

	nor the employees of an authorizer are liable for acts or omissions of a charter school they authorize; RCW 28A.710.040(2), which provides that charter schools must comply with all state statutes and rules made applicable in the school's charter contract, and RCW 28A.710.140(2), which provides that a charter application must provide all the named elements of a proposed charter school plan, including (cc) a the insurance coverage the school will obtain.
There is a possible contradiction in proposed WAC 180-19-030 between (4)(b), calling for accountability and transparency, and (4)(c), calling for autonomy in all matters.	Autonomy in operations in exchange for accountability for performance is the core premise of charter schools. The comment omits the rest of the sentence cited in WAC 180-19-030(4)(b), which is "autonomy in all matters, <i>to the extent authorized by chapter 28A.710 RCW.</i> " [Emphasis added.] The autonomy of charter schools is conditioned by the law applying to all charter schools and by the contract between the individual charter school and its authorizer; it is not open-ended.
The requirement in proposed WAC 180-19-030(4)(b) to provide accountability and transparency in all authorizing practices should be clarified. Do the rules hold school districts accountable for posting all charter applications on their web sites?	The comment is noted. It is not clear that a requirement for school districts to post all charter school applications would be within the scope of SBE rule-making to RCW 28A.710.090.
The rules should be informed by lessons from New York state, including: <ol style="list-style-type: none"> 1. Constrain the timing of charter school enrollments to facilitate budget planning; 2. Create incentives for districts and charter schools to share facilities; 3. Link districts' charter school payments to estimates of costs that the district can reduce in response to enrollment losses; 4. Provide transitional aid to districts experiencing large growth in charter schools. 	The suggestions are outside the scope of SBE rule-making.
The rules need to ensure that for-profit organizations do not run charter schools. In WAC 180-19-040(2)(c), on evaluation of authorizer applications with regard to performance contracting, there is a concern about contracts by non-profits with for-profit management firms who misuse state resources or are incompetent.	RCW 28A.710.030 (Charter school boards – Powers) provides that "Contracts for management operation of the charter school may only be with nonprofit organizations." As this is understood to be an explicit prohibition on management and operation of charter schools by for-profit organizations, there is not a need to address this subject in rules on the process for approval of school districts to be authorizers of charter schools.
There is no clear definition of "likelihood of success" in proposed WAC 180-19-030(3)(a), defining "strategic vision for chartering."	The full provision is that in submitting the district's strategic vision for chartering, the district "must state . . . "the characteristics of the school or schools it is most interested in authorizing, while maintaining a commitment to considering all charter applicants based on the merits of their proposals and the likelihood of success." RCW 28A.710.100 provides, "All authorizers must develop and follow chartering policies and

	practices that are consistent with the principles and standards for quality charter authorizing developed by the national association of charter school authorizers” in named areas, including “soliciting and evaluating charter applications.” NACSA Principles and Standards address in specific terms the criteria for rigorous decision-making on charter applications.
The proposed timeline for authorizer application requires a significant amount of work by local boards of education at the busy time of finalizing budget, authorizing a reduction in force, intensive teacher and staff hiring, and other end-of-school activities. The timeline for applications should be extended.	The proposed rules are amended to extend the time for districts to submit applications in the first year of approvals from June 15, 2013 to July 1, 2013, in order to give districts more time to prepare applications.
The requirement in proposed WAC 180-19-030(3)(a) that a district state “how the school or schools it wishes to authorize would differ from the schools the district currently operates with regard to leadership, staffing, schedule, curriculum, community engagement, or other features” is too specific, and requires the district to do research on effective charter school models.	The SBE respectfully disagrees that this provision requires an applicant district to conduct research on effective charter school models. To address the concern, however, the proposed rules are amended to read “how the school or schools it wishes to authorize might differ from the schools the district currently operates with regard to such features as staffing, schedule, curriculum, and community engagement.”
Proposed WAC 189-19-030(3)(b) is confusing in requiring districts to describe, in full-time equivalent terms, their “authorizing personnel,” and excessive in requiring them to provide the “professional qualifications” of each.	The proposed rules are amended to read “Job descriptions and qualifications of district personnel with anticipated authorizing responsibilities under RCW 28A.710.03.”
Proposed WAC 180-19-030(3)(d), which requires that the draft performance framework include “specific descriptions” of the indicators, measures and metrics to be used, requires too much of a draft document.	The proposed rules are amended to strike “specific.” The purpose of this provision is to clarify that the draft performance framework must meet the requirements of RCW 28A.710.170(2) (Charter contracts – Performance framework).
In proposed WAC 180-19-030(4)(d), it is not clear what is meant by “fully independent governing board.”	Proposed WAC 180-19-040 provides that in evaluating authorizer applications, the SBE will consider whether proposed policies and practices are consistent with the Principles and Standards developed by the National Association of Charter School Authorizers. The NACSA standards for quality oversight and evaluation include specific standards for respecting school autonomy, such as refraining from directing or participating in educational decisions or choices appropriately within a school’s purview or contract. A required part of the charter application under RCW 28A.710.130 is a clear description of the roles and responsibilities of the governing board.
Proposed WAC 180-19-030(4)(e) may create unintended legal liability for school districts for the provision of services to children with disabilities by the charter schools they authorize.	The proposed rules are amended to provide that in the statement of assurances submitted with the application, the district must state that if approved as an authorizer it will “Ensure that any contract it may execute with the governing board of an approved charter school . . .

	provides that the school will provide educational services to students with disabilities, students who are limited English proficient, and any other special populations of students as required by state and federal law.”
The rules need to hold charter schools accountable for serving low-income students.	<p>Proposed WAC 180-19-030 specifically provides that in the strategic vision for chartering the applicant must submit under RCW 28A.710.090(2)(a), the district must state the purposes that it expects to fulfill in being an authorizer of charter schools, with specific reference to the statutory purposes set forth in RCW 28A.710.005, which include “Give priority to opening public charter schools that serve at-risk student populations or students from low-performing schools.” This section further provides specifically that the district must state “how it will give priority to serving at-risk students, as defined in RCW 28A.710.010(2).”</p> <p>RCW 28A.710.140 (2) (Charter applications) provides that “Authorizers shall give preference to applications for charter schools that are designed to enroll and serve at-risk student populations.”</p> <p>It would be outside the scope of rule-making to RCW 28A.710.090 to hold charter schools themselves accountable for serving low-income students, because this section specifically concerns the process for approval of school districts to be authorizers. It is for authorizers to hold the charter schools they authorize accountable for serving low-income students, in accordance with charter contracts. The suggestion may be more properly directed to potential rules to other sections of the law.</p>
The rules should require that charter applications indicate a commitment to ensuring special education students will be served.	The rules address this concern, both in the original form as published and as amended. Adopted WAC 180-19-030(4)(e) requires that in the statement of assurances the district must submit with its application, the district must state that if approved as an authorizer it will “Ensure that any contract it may execute with the governing board of an approved charter school . . . provides that the school will provide educational services to students with disabilities, students who are limited English proficient, and any other special populations of students as required by state and federal law.”
Who will pay for the attorney to represent the charter school board if an authorizer revokes or chooses not to renew a charter school contract?	This comment is outside the scope of rule-making to RCW 28A.710.090. It is more properly directed to possible rule-making to RCW 28A.710.200 (Charter contracts – Nonrenewal or revocation).